

2430 "E" Street, N. W.
Washington, D. C.

8 March 1954

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Subject: Contract

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Dear



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A prompt reply to your letter of 17 February, addressed to [REDACTED], has been somewhat delayed due to pressure of urgent business during [REDACTED] absence.

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Your suggestion of allowing the field representative authority to approve changes up to approximately \$200.00 without prior reference to Headquarters certainly bears merit in expediting the work. However, certain prevailing contract procedures will require adjustment to effect such authority. For example, present requirements are that contract modifications be approved by General Counsel before issuance. Steps have been taken to obtain elimination of this requirement. In the interim and during [REDACTED] absence, it is suggested that for minor change orders of this nature, a teletype containing a brief description and estimated cost be forwarded to Headquarters. Such requests will be given prompt attention in processing the necessary action, either by issuance of change order or direct approval to proceed with firm price determination later.

Regarding measures of pressing the Contractor in the absence of a penalty clause, by withholding payments in excess of ten percent, it would appear that since the Contractor is paid progressively only for work he accomplishes, in accordance with contract provisions, such withholding may complicate contract relations and result in further difficulties rather than accelerate the work, particularly where sub-contracts are involved. It is conceivable that subcontractors may tend to slow up if payment is not forthcoming. Furthermore, it is apparent that a considerable amount of delay is a result of slow processing of approvals and change orders for which the Contractor has not claimed additional time extensions, which does not place the Government in the most advantageous bargaining position.

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About the only legal recourse available is contained in Article 9 of the contract, which provides for termination of the contract. At this stage of the work this would not appear to be a practicable solution. Negotiation of a new contract would be required, probably involving most of the same subcontractors, due to the extent of work and material orders completed, all of which would result in time loss with no guarantee of improvement.

Upon the submission of [REDACTED] revised work schedule, it is requested that you go over it with him in obtaining realistic or required scheduling and effecting compliance therewith. It is hoped that you will be able to obtain his cooperation in this regard.

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Regarding your comments comparing selection of Architect-Engineer contractors on ability to perform work, it is not possible to select lump-sum construction contractors on the same basis. On open bidding, a low bidder complying with the requirements of the contract including submission of bid bond, performance and payment bonds is eligible for award and not much else can be done about it. In certain instances a selected list of bidders may be considered, under circumstances where security, special type of work or other similar considerations may be involved. Cost-plus-fixed-fee contracts may be negotiated with selected qualified contractors. However, present Government policy limits this type of contract to extraordinary circumstances. Recent contracts issued by this office have included liquidated damage provisions where considered advisable.

Very truly yours,

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[REDACTED]
Acting Chief, Real Estate & Construction Division